THE

MADRAS LAW JOURNAL.

XI] DECEMBER [1949

DELEGATED LEGISLATION AND THE FEDERAL COURT

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Few judgments delivered by the Federal Court of India in the short span of its existence could have more profound influence on the legislative machinery of the country than the decision in *Jatindra Nath Gupta* v. *The Province of Bihar and others*[1]. Here at Madras its immediate effect is found in the spate of Ordinances, validating, reviving, and re-enacting the Acts rendered lifeless by the Federal Court's decree. And yet, it is obvious, that its full implications have still to be realised, and its potentialities still to be assessed.

The Bihar Provincial Legislature had enacted the Bihar Maintenance Order Act of 1947. It came into force on 16th March, 1947 Its operation was limited to one year from the date of its commencement by sub-section (3) of section 1; but the proviso to the sub-section enabled "the Provincial Government by notification on a resolution passed by the Bihar Legislative Assembly and agreed to by the Bihar Legislative Council to extend the Act for a further period of one year with such modifications as may be specified in the notification." On the 11th March, 1948, on a resolution by both the Houses of Legislature a notification was issued extending the Act for another year from 16th March, 1948 The substantial question that arose before the Federal Court was whether the proviso in the Bihar Maintenance of Public Order Act of 1947 was *ultra vires* the Bihar Legislature, the contention being that the power to extend the life of an Act was clearly legislative power, and the Provincial Legislature had no authority under the constitution to delegate this power to any other body. Again the power to modify an Act was also legislative power. When section 99 of the Government of India Act confided legislative powers only to the Provincial Legislature, it was argued that the legislative power could be exercised only by the repository of such powers, and not by any other organ or instrumentality. The proviso in the Bihar Act for extension of the Act by notification with or without modification was therefore *ultra vires* the Constitution Act The answer of the Government Advocate of Bihar may be stated in the words of Kania, C J "On behalf of the respondent it is not disputed that to the extent the proviso conferred the power of modification it was legislative power. But it was argued that only that portion of the power might be considered *ultra vires* and therefore excluded from the proviso. It was pointed out that by their resolutions the two Chambers and the Provincial Government had made no modifications in the Act. The power

1. (1949) 2 M.L J. 356 : 1949 F.L J 225 (F.C.).

to extend the legislation for one year more was legislative power, but was conditional legislation and therefore it was not *ultra vires* of the Provincial Government "[1]. Clearly, the Government had conceded that to the extent the proviso delegated the power to modify that Act to a body other than the Legislature it was *ultra vires*. With reference to the power of extension the contention was that it was not delegated legislation but conditional legislation. If it was delegated legislation the Government again did not dispute that it was *ultra vires.* In either view, the learned Judges were not invited to consider the question whether the delegation of legislative power was beyond the competence of the Legislatures in India and therefore *ultra vires* Counsel on either side having assumed and conceded that delegated legislation was *ultra vires*, the issue was reduced to a narrow compass : Was the proviso authorising extension of the Act by notification conditional or delegated legislation ? If it was conditional legislation it was *intra vires* , if delegated legislation it was granted on all hands that it was *ultra vires.* The Federal Court came to the conclusion by a majority of four to one that the said proviso was not conditional but delegated legislation. And delegated legislation on the concession of Counsel being undisputably *ultra vires*, the offending proviso was held invalid It was unfortunate that the correctness of the assumption was not and could not be canvassed before their Lordships in all its bearings, though here and there in the opinions delivered by Mahajan and Mukherjea, JJ , there was an incidental examination of the distinction between delegated legislation and conditional legislation for the purpose of ascertaining the class to which the impuged proviso belonged

The enactment of such identical provisos having been the normal mode of extending Temporary Acts in almost all the Provinces, the validity of similar Acts was questioned before the High Courts of Calcutta[2] and of Madras[3] At Calcutta the Government sought to avoid the observations of the Federal Court on this aspect as *obiter.* But Harris, C J , held that even "its *obiter dicta* must ordinarily be followed by inferior Courts including High Courts unless there is very good reason for not doing so."[2] At Madras, the matter came up before a Bench composed of Satyanarayana and Basheer Ahmed Sayeed, JJ , in *Kalyanaveerabhadrayya* v *Rex*[3]. The Advocate General of Madras who appeared for his Government contended " that a bare power to extend the duration of life of an Act *was not a legislative power* and could validly be delegated, and that this question was not considered fully by the Federal Court, and even if there were observations in the judgment of the Federal Court, those observations were *obiter* [4]". The contest thus centred again on the proposition whether extension of an Act by notification was an exercise of legislative power, not whether assuming it was so the delegation was *intra vires.* The distinction between legislative and non-legislative power, between delegated legislation and conditional legislation was again elaborately analysed with the aid and assistance of the pronouncements of American, Australian, Indian and Canadian Judges and of Their Lordships of the Judicial Committee ; and the learned Judges in the end found themselves in agreement with the Federal Court Judgment in *Jatindranath's*[5] case.

That delegation of legislative power by the Indian Legislatures was *ultra vires* was a doctrine therefore arrived at not by applying the mind of the Court to the considerations implicit therein, nor by examining the concerned authorities in the background of the Indian Constitution, nor even on a scrutiny of the relevant provisions of the Government of India Act, but solely on the admissions of counsel in *Jatindranath's*[5] case that delegated legislation was *ultra vires.* Section 212 of the Government of India Act compelled all Courts in the land to recognise the law declared by the Federal Court as binding. No High Court could therefore disregard the basic principles enunciated in *Jatindranath's*[5] case, even though a judgment on agreement lacks the authoritative force of a judgment *in invitum.*

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1 (1949) 2 M.L J 356 (360) . 1949 F.L J. 225 (F C)

2 *Badal Bose* v. *Chief Secretary to the Govt. of W. Bengal* C.W.N. 728.

3. (1949) 2 M.L J 663.

4. *Ibid* at p. 665.

5 (1949) 2 M.L.J. 356 . 1949 F.L.J. 225. (F.C).

The problem still remains whether the assumption made by counsel and accepted by Court without exercising its judicial mind is correct. If delegated legislation is incompetent and unauthorised by our constitution it is plain that the illegalities of the past should be immediately redressed, and the frame work of the present legislative machinery be re-aligned for the future.

To appreciate the significance of the inroads made by new doctrine into the constitutional jurisprudence of India it is necessary to know what exactly is implied by the term delegated legislation. Legislation is but law-making; and whenever a duly constituted Legislature empowers any other body to make any rules or regulations, the rules or regulations so made in pursuance of such authority are classed as delegated legislation, though sometimes loosely the Act so delegating is itself called delegated legislation. Delegated legislation is thus subordinate or derivative, not principal or original legislation Such rules and regulations owe their legal validity to the Statute of their creation The principles governing the law of Agency, equally apply to measure the validity of delegated legislation. If the rules made in virtue of a statute conform to and do not conflict with the statute, or in other words, if they lie within the scope and authority conferred by the statute they are *intra* and not *ultra vires*, and valid All statutory rules and regulations, bye-laws and orders, by whatever name they are called, come undoubtedly within the class of delegated legislation. As stated by Wade and Philipps in their text book on 'Constitutional Law' at page 289: "The function of legislation—the making of General rules—is a function of Parliament. When Parliament delegates that function we speak of delegated legislation The term is used of (*a*) the exercise of a legislative power delegated by Parliament or (*b*) the rules or regulations passed as the result of the exercise of a delegated legislative power The bye-laws made by local authorities or railway companies are delegated legislation. Professional bodies too may be given power to enact delegated legislation, *e g*, the Council of the Law Society (the governing body of the Solicitor's profession) is given power by the Solicitors Act, 1932, to make regulations for the compulsory attendance of articled clerks at schools of law".

But it would obviously be incorrect to speak of the delegation of legislative power as equivalent to, or synonymous with abdication or surrender of such power. Delegation and abdication or surrender are two wide apart judicial concepts differing in inherent content. Delegation presupposes the continued existence of the Principal and Agent, and the actual exercise or possibility of control of the Agent by the Principal; while surrender or abdication indicates complete self-effacement and the absence of any control *in præsenti* or *in futuro*. In the one the reserve of authority still resides; in the other it is extinguished. Delegated legislation is always dependent for its life and authority on the life and authority of the parent statute It is a creature of its paramount law, and can live only so long as the paramount law is alive, unless it is adopted by any other subsequent Act[1]. But abdicated or surrendered legislation though it may owe its life to the body that has abdicated, is not dependent for its functioning on the existence of the parent. In willing the surrender it wills its own death. In enacting the Burma Independence Act, 1947, Parliament abdicated all legislative powers over Burma But a classical instance comes from Canada which went up before the Judicial Committee of the Privy Council[2]. Section 92 of the British North America Act entrusted exclusive legislative powers to each Provincial Legislature in relation to certain classes of subjects including "the amendment from time to time notwithstanding anything in this Act, of the constitution of the Province, excepting as regards the office of the Lieutenant Governor." By the Initiative and Referendum Act passed by the Manitoba Legislature, laws could be made and repealed by the direct vote of the electors, instead of by the Legislative Assembly. Was this Act valid? Viscount Haldane pronouncing

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1 *Watson* v. *Winch*, (1916) 1 K B. 668. (1919) A.C. 935.
2 In re *Initiative and Referendum Act*,

the judgment of the Judicial Committee expressed thus :[1] "No doubt a body with a power of legislation on the subjects entrusted to it so ample as that enjoyed by a Provincial Legislature in Canada could while preserving its own capacity intact seek the assistance of subordinate agencies as had been done when in *Hodge* v. *The Queen*[2], the Legislature of Ontario was held entitled to entrust to a Board of Commissioners authority to enact regulations relating to taverns, but it does not follow that it can create and endow with its own capacity a new legislative power not created by the Act to which it owes its existence." What the impugned Act attempted was to surrender its powers completely in favour of the electors. The Legislature had sought to efface itself. This was not delegation but abdication, not permissible under the fundamental law of Canada.

Delegated legislation is different from conditional legislation; and the judgments of the Federal Court in *Jatindranath's*[3] case, and of the Madras High Court in *Kalyanam Veerabhadrayya's*[4] case are illuminating. Both the Courts adopted for their guidance the principles laid down by the Judicial Committee in *The Queen* v. *Burah*[5] and *Russell* v. *The Queen*[6]. In the first case an Act of the Indian Legislature had authorised the Lieutenant-Governor of Bengal by notification to bring into operation the aforesaid Act in respect of certain territories. The Lieutenant-Governor was also empowered to extend the Act by similar notification to other areas. The Act was attacked as delegation of legislative power, which the High Court of Calcutta had held, was invalid. On appeal to the Judicial Committee, the judgment of the High Court was reversed. Lord Selborne said: "The proper Legislature has exercised its judgment as to place, person, laws, powers, and the result of the judgment had been to legislate conditionally as to all these things. The conditions having been fulfilled, the legislation is now absolute. Where plenary powers of legislation exist as to particular subjects whether in an Imperial or in a Provincial Legislature, they may (in their Lordships' judgment) be well exercised either absolutely or conditionally." In *Russell* v. *The Queen*[6] the Canadian Temperance Act in question had provided for its being brought into force in any city or country by Order-in-Council of the Governor-General on a petition by the majority of electors concerned. Their Lordships upheld the Act as a piece of conditional legislation coming within the principle of *Burah's*[5] case. Another authority referred to was *King-Emperor* v. *Benoari Lal Sarma*[7] where the Special Courts Ordinance issued by the Governor-General of India in exercise of his powers under section 72 of Schedule IX of the Government of India Act was challenged as *ultra vires*. It was contended that the Governor-General could not empower any other authority at his discretion to set up such special Courts impliedly repealing the provisions of the Criminal Procedure Code, a contention which had found favour with the Federal Court. But on appeal to the Judicial Committee Viscount Simon[7] said: "It is undoubtedly true that the Governor-General, acting under section 72 of Schedule IX must himself discharge the duty of legislation there cast on him, and cannot transfer it to other authorities. But the Governor-General has not delegated his legislative powers at all. His powers in this respect, in cases of emergency, are as wide as the powers of the Indian Legislature which, as already pointed out, in view of the proclamation under section 102, had power to make laws for a Province even in respect of matters which would otherwise be reserved to the Provincial Legislature. Their Lordships are unable to see that there was any valid objection, in point of legality, to the Governor-General's Ordinance taking the form that the actual setting up of a special Court under the terms of the Ordinance should take place at the time and within the limits judged to be necessary by the Provincial Government specially concerned. This is not delegated legislation at all. It is merely an example of the not uncommon legislative arrangement by which the local application of

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1 (1919) A.C. 935 (945).
2 (1883) 9 A.C. 117.
3 (1949) 2 M.L.J. 356 : 1949 F.L.J. 225 (F.C.)
4 (1949) 2 M.L.J. 663.
5 (1878) 3 A.C. 889 : I.L.R. 4 Cal. 172.
6. (1882) 7 A.C. 829.
7 (1945) 1 M.L.J. 76 : 1945 F.L.J. 11 : L.R. 72 I.A. 57 : 1945 F.C.R. 161.

the provision of statute is determined by the judgment of a local administrative body as to its necessity. Their Lordships' are in entire agreement with the views of the Chief Justice of Bengal and of Khundkar, J., on this part of the case. The latter Judge appositely quotes a passage from the judgment of the Privy Council in the well-known decision in *Russell* v. *The Queen*"[1] When an Act is passed by a law-making body leaving the time and manner of its application, or the persons, things and area on which it is to operate to the discretion of an outside agency, such legislation is called conditional legislation; that is to say on fulfilment of the condition prescribed, legislation becomes absolute. Nor does the American doctrine differ in principle in determining the extent of conditional legislation. "To assert that a law is less than a law, because it is made to depend on a future event or act, is to rob the Legislature of the power to act wisely for the public welfare whenever a law is passed relating to a state of affairs not yet developed, or to things future and impossible to fully know. The Legislature cannot delegate its power to make a law, but it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make, its own action depend. To deny this would be to stop the wheels of Government. There are many things upon which wise and useful legislation must depend which cannot be known to the law-making power, and must, therefore, be a subject of inquiry and determination outside of the halls of legislation"[2]

While delegated legislation therefore is thus different from abdicated or surrendered legislation on the one hand and conditional legislation on the other, the principal questions which arise for determination are firstly, what classes of legislation came within the ambit of delegated legislation, and secondly, to what extent, if any, is delegated legislation competent under the present Constitution Act of India.

The definition of the text book writers Wade and Phillips of delegated legislation as understood in English law has already been noticed. Prof C. K. Allen in his 'Law and Order' has described the various forms that delegated legislation takes. They are Orders-in-Council, proclamations under any Act, Orders, Rules and Regulations in virtue of any statutory authority, bye-laws enacted by local authorities, Public utility concerns, and Boards and Commissions by whatever names they may be called. By far however the most comprehensive contribution on delegated legislation is the Report of the Donoughmore Committee on Minister' Powers, appointed by Lord Chanceller Sankey as the result of wide public concern caused by the severe indictment of Lord Chief Justice Hewart in his 'New Despotism'. The thesis of the Lord Chief Justice was that delegated legislation was being increasingly resorted to, to increase the power of the Executive and to defeat the sovereignty of Parliament and the jurisdiction of the King's Courts. The members of the Committee included eminent jurists like Sir William Holdsworth, lawyers like Sir Leslie Scott and Professors like Harold Lasky. The report produced by the Committee has become almost a classical treatise on delegated legislation. All delegated legislation derives its force from Acts of Parliament. Statutory Order-in-Council, Rules and Regulations are essentially delegated legislation. According to the report, delegated legislation is of two kinds: (*a*) The normal type which has two characteristics, one positive where the limits of rule making powers are already defined; and the other, negative, by which no power is granted to the Legislature on matters of principle or to impose taxation or to amend any Act of Parliament; (*b*) The exceptional type of four classes where power is given (i) to legislate on matters of principle and even to impose taxation, (ii) to amend Acts of Parliament either the same or other Acts, (iii) conferring so wide a discretion on the Ministers to pass rules and orders that it is impossible to know its limits and (iv) where Parliament without formally abandoning its normal practice of limiting delegated powers has in fact done so by forbidding

1. (1882) 7 A C 829
2. Lockes' Appeal cited and approved in *Field* v. *Clark*, 143 U. S 649.

control by Courts by enacting provisions such as " the order when made shall have effect as if enacted in the Act".

That class of legislation empowering a Minister to modify the provisions of the Act for the removal of difficulties in bringing it into force had earned the nickname of Henry VIII clause, no doubt in memory of that Monarch's leanings to absolutism. But whatever the type be, there is no question that both the normal and the exceptional come within the domain of delegated legislation. The Government of India Act of 1935 abounds with illustrations of almost every conceivable kind of delegated and conditional legislation. Part II, the Federal portion of the Act was to have come into force on such date as His Majesty may appoint by proclamation ; the commencement of Part III and the constitution of the Federal Court, the Federal Public Service Commission and the Federal Railway Authority are entrusted to Orders-in-Council. Existing Indian Laws may be modified and adapted by Orders-in-Council. While the normal class of delegated legislation is enacted by section 84 for the making of rules for regulating procedure of each chamber of a Provincial Legislature and by section 59 for the framing of rules for the convenient transaction of the business of the Provincial Government, Henry VIII clause figures in section 310, vesting power in His Majesty to modify the Constitution Act itself for removal of difficulties which may arise in relation to the transition from the old order to the new. Nor can we easily forget section 93 by which under a proclamation of the Governor, a Province passes from democracy to dictatorship, and the Governor gathers unto himself almost all the legislative powers, suspending the operations of any provision of the Government of India Act he chooses. The extension of the duration of Proclamation for further periods is by resolution of both the Houses of Parliament, a device resorted to for the continuance of regulations made under the British Emergency Powers Act, 1920 Similarly The Indian (Central Government and Legislature) Act 1946, 9 & 10 Geo. 6, Ch 39, confers on the Indian Legislature power to enact laws with reference to Trade and Commerce and Unemployment of persons serving in the war for a period of one year beginning with the date on which the Proclamation of Emergency made on the outbreak of the war ceases to operate, or if the Governor-General by public notification so directs for a period of two years begining with that date ; but the period may be extended by resolution of both Houses of Parliament subject to a maximum period of 5 years After the Indian Independence Act, the words Dominion Legislature were substituted for the Houses of Parliament occurring in the aforesaid Act, and references to the Dominion Legislature have now to be construed as references to the Constituent Assembly Extension of the duration of an act by notification or by resolution therefore is not rare either in England or in India ; and it may indeed be asked not unreasonably why, if it is valid to bring an act into force later in time after its enactment on the discretion of another body, it should be invalid to bring it into force again on the expiry of the time fixed in the Act by another body. Between commencement and continuance of an Act the difference is but thin ; in the one case the Act comes into operation for the first time, in the other it comes into operation on the expiry of its original duration. Any way all these types of delegated legislation are within the powers of Parliament and are sanctioned by the law and custom of the constitution

The constitutional jurisprudence of India takes its roots from Britain. The three organs of the State, Legislative, Executive and Judiciary are largely patterned on the British model, the Governor being the replica of the King. Delegated legislation of the same types as in England is practised in India. The technique of Whitehall in its varied forms has been copied at Delhi, or at Madras ; with the growing complexity of Governmental functions and the increasing administrative control over the day to day life of the community, delegated legislation has become the inevitable handmaid of almost every statute. The Prohibition Act (Act X of 1937), The Regulation of Sale of Cloth Act (Act XII of 1937), The Agriculturists Relief Act

(Act IV of 1938), The Traffic Control Act (Act V of 1938), The Tolls and Motor Vehicles Taxation Amendment Act (Act VI of 1938), The Malabar Temple Entry Act (Act XX of 1938), The Public Health Act (Act III of 1939), The Electricity Duty Act (Act V of 1939), Sale of Motor Spirit Taxation Act (Act VI of 1939), The Tobacco Taxation of Sales and Licensing Act (Act VIII of 1939), The General Sales Tax Act (Act IX of 1939), The Entertainments Tax Act (Act X of 1939), The Mopilla Marumakkathayam Act (Act XVII of 1939), The Christian Marriage Validation Act (Act XVI of 1940) are some of the Acts of the Madras Provincial Legislature passed after the introduction of the Federal framework. Every one of these Acts contains sections empowering the Provincial Government to make rules for the purpose of carrying into effect the provisions of such Acts. In most of these Acts[1] there is the significant provision that all rules made under this Act *shall have effect as if enacted in this Act*, the result being as stated by Lord Herschell in *Institute of Patent Agents* v *Lockwood*[2] that it was difficult to give this clause "any other meaning than this that you shall for all purposes of construction or obligation or otherwise treat them exactly as if they were in the Act." All such rules had therefore the same status as the statute itself, the rule-making authority being thus endowed with legislative capacity to this extent Henry VIII clause makes its appearance in a subdued though not less insidious form in many of these Acts. Section 12 of Act V of 1938 enacts : "If any difficulty arises in giving effect to the provisions of this Act or the Madras City Municipal Act, 1919, The Madras District Municipalities Act, 1920, The Madras Local Boards Act, 1920, The Indian Motor Vehicles Act, 1914, or The Madras Motor Vehicles Taxation Act, 1931, as amendeed by this Act, the Provincial Government, as occasion may require, *may by order do anything* which appears to them to be necessary for the purpose of removing the difficulty" Again, section 3 of the Defence of India Act, 1939 : "Any rule made under section 2, and any order made under any such rule, shall have effect notwithstanding *anything inconsistent therewith contained in any enactment other than this Act or* in any instrument having effect by virtue of any enactment other than this Act"

That is to say, not only can a rule amend, modify or repeal the provisions of an existing Act of any Legislature in India, Central or Provincial, even an order passed by an administrative officer like a Collector, to whom powers are delegated by the rules, could, while acting within the scope of his authority, override any Indian or Provincial Law. Nor is the expediency of resorting to the extension of a Temporary Act by notification by the Provincial Governnment quite uncommon. Provisions similar to those in section 93 of the Government of India Act, 1935 and in section 4 of the India (Central Government and Legislature) Act, 1946, have been copied in several Acts, as in the Bihar Maintenance of Public Order Act 1947, some times on approval by a resolution of both houses of the Legislature and sometimes without. It need hardly be added that a resolution of one or both chambers does not have the validity or the force of an Act of the Legislature ; for so long as a particular legislative power is not exercised by the entire body wherein it is located by the organic law, but only by a component part or parts, it is manifest, that such exercise cannot have the supreme authority as a Statute enacted of the Legislature As stated by Lord Denman, C J., in *Stockdale* v. *Hansard*[3] with reference to the British Constitution :

"The supremacy of Parliament, the foundation on which the claim is made to rest, appears to me completely to overturn it, because the House of Commons is not the Parliament, but only a co-ordinate and component part of the Parliament. That sovereign power can make and unmake the laws ; but the concurrence of the three legislative estates is necessary ; the resolution of any one of them cannot

1 Act X of 1937, Acts IV and XX of 1938, Act III, VI, IX, X, VII of 1939, and Act XVI of 1940.

2. (1894) A C. 347

3. (1839) 9 A & E. 1.

alter the law, or place any one beyond its control. The proposition is therefore wholly untenable, and abhorrent to the first principles of the Constitution of England."

All these rules, orders, notifications and regulations whether they belong to the normal or the exceptional type undoubtedly appertain to the sphere of delegated legislation; and in view of the doctrine newly projected into the constitutional jurisprudence of India that 'It is not and cannot be disputed that delegated legislation will be *ultra vires*,' it follows that all the Acts of the Legislatures in India, Central or Provincial, to the extent they confide rule-making powers to any outside body, and all such rules, passed in pursuance thereof, whatever their category be, must necessarily be invalid and of no legal effect The frame work of our administration is ribbed with innumerable rules and orders based on statutory authority, and has been built upon the assumption that the Legislatures in India have the same plenary powers as the Parliament which created them. If it is now ordained that the foundations on which the administrative edifice rest can no longer be regarded as secure, it is not difficult to imagine the serious consequence that must follow All action taken, proceedings held, properties obtained, fines collected and penalties levied in virtue of the authority of such rules and regulations are rendered illegal Section 3 of the Defence of India Act, 1939, must necessarily be *ultra vires*, and all the rules enacted thereunder on the multitude of matters must be tainted with illegality. The floodgates of litigation will soon be opened Settled facts of life will be found unsettled. Validiating Acts, Acts of Indemnity, and a vast number of other remedial Acts will soon have to be devised. Nor is this all The benefits of delegated legislation which the Donoughmore Commission recognised as inevitable to meet the complexities of modern life can no longer sustain the growing needs of the country

It is therefore imperative that the validity of the restraint on delegated legislation should be closely scrutinised The Federal Court relied on *The Queen* v. *Burah*[1], and *Russel* v *The Queen*[2], for the purpose of distinguishing delegated legislation from conditional legislation But in neither case did their Lordships subscribe to the totally different doctrine that delegated legislation would be *ultra vires*. On the other hand the penultimate paragraph of the judgment of Lord Selborne in *Burah's case*[1] recognised and upheld the competency of the long course of delegated legislation adopted by the Indian Legislatures for a number of years including the power to apply existing Acts subject to 'restriction, limitations, and proviso' thought necessary by the delegated authority. The language of Lord Selborne is neither ambiguous nor capable of any other interpretation. His Lordship says:

"By section 385 of the Code of Civil Procedure it is provided that 'this Act shall not take effect in any part of the territories not subject to the general regulations of Bengal, Madras and Bombay until the same shall be extended thereto by the Governor-General in Council (not in his legislative capacity) or by the Local Government to which such territory is subordinate and notified in the Gazette' Section 445 in the Code of Criminal Procedure is precisely similar And by section 39 of Act XXIII of 1861, when any such extension as that authorised by section 385 of the Act of 1859 is made, it may, with the previous sanction of the Governor-General in Council (not in his legislative capacity) be declared to be 'subject to any restriction, limitation or proviso which the local Government may think proper' If their Lordships were to adopt the view of the majority of the High Court, they would (unless distinctions were made on grounds beyond the competency of the Judicial Office) be casting doubt upon the validity of a long course of legislation, appropriate, as far as they can judge, to the particular circumstances of India . . . . For such doubt their Lordships are unable to discover any foundations, either in the affirmative or negative words of that Act".

1. (1878) 3 A C. 889, 906 I.L R. 4 Cal. 172, 2. (1882) 7 A C 829

Rex v *Burah*[1] has been considered all along as the leading authority on the validity of both conditional and delegated legislation. If it is lawful for the Indian Legislature to authorise a Lieutenant-Governor to extend its Act with restriction, limitation or proviso, which he thinks proper, it must equally be lawful for a Governor to continue an Act with modifications As stated earlier, Kania, C J., rested his opinion to the contrary in *Jatindranath's*[2] case solely on the admission of counsel Patanjali Sastri, J , however bye-passed the issue " assuming, without deciding, that the enactment of the Provincial Legislature was *intra vires*[3]" Mahajan, J , stated his reasons thus :[4] "It has therefore to be determined whether the proviso offends against the maxim *delegatus non potest delegare* Distinction between delegation of power to make the law which necessarily involves a discretion as to what it shall be, and conferring discretion or authority as to its execution to be exercised under and in pursuance of the law is a true one and has to be made in all cases where such a question is raised In case of conditional legislation on fulfilment of the condition the legislation becomes absolute but in case of delegated legislation the delegate has to take a decision whether that legislation is to continue or to be modified, amended or varied. The proviso which has been assailed in this case judged on the above test comes within the ambit of delegated legislation, is thus an improper piece of legislation and void to my mind It not only amounts to abdication of legislative authority by the Provincial legislation, it goes further and amounts to setting up a parallel Legislature for enacting a modified Bihar Maintenance of Public Order Act and for enacting a provision in the Act that the Act has to be enacted for a further period of one year . Modification of statute amounts to re-enacting it practically . . Under section 99 of the Government of India Act a Provincial Legislature alone can make laws for a Province . . . In my opinion no external body can be delegated with the duty of making modifications in the statute but that is what the proviso has done This novel device to defeat the Constitution Act adopted by the Provincial Legislature cannot have the approval of this Court It is a dangerous device to defeat the clear and unambiguous provisions of the Constitution Act and if encouraged may lead to the substitution of new law-making bodies under cover of so-called conditional legislation."

Mukherjea, J , agreed with learned Chief Justice saying [5] " Now it is one of the settled maxims of constitutional law that the power conferred on legislative authority to make laws cannot be delegated by it to any other body or department. The authority must remain where it is located and the power to which the prerogative has been entrusted cannot relieve itself from the responsibility by choosing other organs upon which it shall be devolved (Cooley . Constitutional Limitations, 8th Edn., Vol I, page 227) " The American doctrine enunciated in *Field* v. *Clark*[6] was cited as authority in support

Fazl Ali, J , however dissented from his learned colleagues on the ground that the proviso was a good piece of conditional legislation "The power to extend the act and the power to modify it are two separate powers, and, assuming that the Act may not be valid in so far as it confers the latter power, it can be held to be valid in so far as it confers the former power . . . The two powers mentioned in the proviso are separable "[7]

It is to the opinion of their Lordships Mahajan and Mukherjea that we have to look to for the reasons that induced them, apart from the admission of counsel, to arrive at the conclusion that delegated legislation is incompetent under the Constitution Act ; and when analysed they fall into two lines : (1) Delegated Legislation offends against the maxim *Delegatus non potest delegare* (2) Legislative power must be exercised only by the authority to which it is confided by the Constitution, and by no other.

1 (1878) 3 A C. 889 : I L R 4 Cal 172
2. (1949) 2 M L J 356 : 1949 F L J 225 (F C)
3. *Ibid* p 364.
4 *Ibid* p 368
5 *Ibid.* p 375
6 143 U. S 649, *sup a*
7 (1949) 2 M L J 356, 381 1949 F.L.J. 225 (F C).

But these are precisely the doctrines evolved in the interpretation of the American Constitution, on a consideration of characteristics peculiar to its own. Crawford in his book of Statutory Construction begins the chapter on "Delegation of Legislative Powers" in these words, at page 24: "In as much as the legislative power of the Government is vested exclusively in the Legislature *in accordance with the doctrine of separation of powers*, the general rule is that the Legislature cannot surrender or abdicate such power As a result any attempt to do so is unconstitutional and void. Nor can this power to make laws be delegated by the Legislature to any other authority—*delegatus non potest delegare.* A power, however, which is not legislative in character may be delegated"

But in inviting the Federal Court to apply American guides to constitutional construction it does not appear to have been realised that there are fundamental differences between the two constitutions both in their basic political philosophy and structural design which preclude the adoption of such a course. The American constitution is founded on the doctrine of separation of powers originating from the thesis of Montesquie expounded in the immortal language of Hamilton that "the accumulation of all powers, legislative, executive and judiciary, in the same hands, whether of one, a few, or many and whether hereditary, self-appointed or affective, may justly be pronounced the very definition of tyranny". Firmly believing that the end of Government was liberty, and that liberty could be secured only by the division of the three powers, the framers of the American Constitution ordained '*All* legislative powers herein granted shall be vested in a Congress, ... the executive power shall be vested in a President of the United States of America... The judicial power of the United States shall be vested in one Supreme Court and in such inferior Courts as the Congress may from time to time ordain and establish.' But the Government of India Act, 1935, proceeds on no such postulates. The Constitution of India, though federal in framework is moulded on the principles of the British Constitution, the leading characteristic of which, it is well known, is not any sharp cut division but fusion of powers with checks and balances. In the formal law of the constitution the King is the appex of its Parliament, the head of the executive and the fountain of justice; in its actual working His Majesty's Government is the controlling part of the Legislature, and the Highest Judicial Tribunal in the land is its Upper Chamber. The mechanism of responsible government is thus built on the integration, not separation of powers. It runs, it is true, through the delicate realm of conventions; but its movements are unhampered by any doctrinaire impediments. In sharp contrast stands Presidential Government fashioned in the United States. The wheels of its administration must thread their way, wary of the signpost of separation of powers, or move at its own peril.

Delegation of powers has never been a forbidden fruit in the British constitution; and wherever democratic institutions and systems of Government have been planted by the British, in the Old world or in the New, in the East or West, they have been patterned on the model of Westminster, though details may of course vary with the exigencies of each country Whether the Legislatures so established by Parliament are called 'non-sovereign' Legislatures in the well-known phrase of Dicey, or should be more appropriately termed as 'controlled' and not 'uncontrolled' Legislatures in the language of Lord Birkenhead in *McCawley* v. *The King*[1], it must be admitted that they have all been made in the image of their maker; and throughout the web of the public law of the Empire runs one golden thread that these Legislatures are not delegates of the Imperial Parliament, but within the limits imposed by the terms of their creation, are sovereign bodies having the same plenitude of power as the Imperial Parliament possessed in its own freedom.

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1. (1920) A.C 691.

The principle was affirmed long back in *R v. Burah*[1]:

"The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it, and it can of course do nothing beyond the limits which circumscribe those powers. But when acting within those limits, it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was intended to have plenary powers of legislation, as large and of the same nature as those of Parliament itself"

In *Hodge* v *The Queen*[2], it was contended that a conviction for an offence for breach of a regulation made by the License Commissioners in pursuance of the Liquor License Act of 1877 was illegal, the argument being that the Imperial Parliament had conferred no authority on the local Legislature to delegate these powers to the License Commissioners or any other persons In other words, that the power conferred by the Imperial Parliament on the local Legislature should be exercised in full by that body and by that body alone. The maxim *delegatus non potest delegare* was relied on. These are words which are echoed in the reasons given by Mahajan and Mukherjea, JJ, in *Jatindranath's* case But Sir Barnes Peacock in delivering the judgment of the Board repelled these contentions in these words:

"It appears to their Lordships however that the objection thus raised by the appellants is founded on an entire misconception of the true character and position of the Provincial Legislatures. They are in no sense delegates of or acting under any mandate from the Imperial Parliament. When the British North America Act enacted that there should be a Legislature for Ontario, and that its Legislative Assembly should have exclusive authority to make laws for the Province and for provincial purposes in relation to the matters enumerated in section 92, it conferred powers not in any sense to be exercised by delegation from or as agents of the Imperial Parliament, but authority as plenary and as ample within the limits prescribed by section 92 as the Imperial Parliament in the plenitude of its power possessed and could bestow. Within these limits of subjects and area the local Legislature is supreme and has the same authority as the Imperial Parliament or the Parliament of the Dominion, would have had under like circumstances to confide to a municipal institution or body of its own creation authority to make by-laws or resolutions as to subjects specified in the enactment, and with the object of carrying the enactment into operation and effect.

It is obvious that such an authority is ancillary to legislation, and without it an attempt to provide for varying details and machinery to carry them out might become oppressive or absolutely fail. The very full and very elaborate judgment of the Court of Appeal contains abundance of precedents for this legislation, entrusting a limited discretionary authority to others, and has many illustrations of its necessity and convenience It was argued at the bar that a Legislature committing important regulations to agents or delegates effaces itself. That is not so. It retains its powers intact, and can, whenever it pleases, destroy the agency it has created and set up another, or take the matter directly into his (its) own hands. How far it shall seek the aid of subordinate agencies, and how long it shall continue them, are matters for each Legislature, and not for Courts of law, to decide"

The same contention was repeated in *Powell* v *Apollo Candle Co.*[3] and rejected again by the Judicial Committee following the two cases *The Queen* v. *Burah*[1]

1 (1878) 3 A.C. 889: I.L.R. 4 Cal 172.
2 (1883) 9 A.C. 117.
3 (1885) 10 A.C. 282

and *Hodge* v *The Queen*[1], stating : " These two cases have put an end to a doctrine which appears at one time to have had some currency, that a Colonial Legislature is a delegate of the Imperial Legislature It is a Legislature restricted in the area of its powers, but within the area unrestricted and not acting as an agent or a delegate "

The principle was re-affirmed in *Liquidators of the Maritime Bank of Canada* v. *Receiver General of New Brunswick*[2], where Lord Watson emphasising the same aspect with reference to a Provincial Legislature of Canada said " its status is in no way analogous to that of a municipal institution, which is an authority constituted for purpose of local administration It possesses powers, not of administration merely, but of legislation in the strictest sense of the word ; and within the the limits assigned by section 92 of the Act of 1867, these powers are exclusive and supreme "

In re *The Initiative and Referendum Act*[3] is another authority for the same proposition. Here Viscount Haldane referring to the status of the Canadian Provincial Legislatures said " Within these limits of area and subjects, its local Legislature so long as the Imperial Parliament did not repeal its own Act conferring their status, was to be supreme, and had such powers as the Imperial Parliament possessed in the plenitude of its own freedom before it handed them over to the Dominion and the Provinces in accordance with the scheme of distribution which it enacted in 1867 "

In *Croft* v. *Dumphy*[4] where the power of Dominion Parliament to enact laws of extra-territorial operation was affirmed, Lord Macmillan observed at page 163 : " Once it is found that a particular topic of legislation is among those upon which the Dominion Parliament may competently legislate as being for the peace, order and good government of Canada or as being one of the specific subjects enumerated in section 91 of the British North America Act, their Lordships see no reason to restrict the permitted scope of such Legislation by any other consideration than is applicable to the legislation of a fully Sovereign State."

A more recent Canadian case is *G W. Shannon and others* v *Lower Mainland Dairy Products and another*[5] in which the competency of delegated legislation arose pointedly in issue Lord Atkin stated " The third objection is that it is not within the powers of the Provincial Legislature to delegate so-called legislative powers to the Lieutenant-Governor in Council, or to give him powers of further delegation This objection appears to their Lordships subversive of the rights which the Provincial Legislature enjoys while dealing with matters falling within the classes of subjects in relation to which the constitution has granted legislative powers Within its appointed sphere the Provincial Legislature is as supreme as any other Parliament , and it is unnecessary to try to enumerate the innumerable occasions in which Legislatures both Provincial and Dominion and Imperial have entrusted various persons and bodies with similar powers to those contained in this Act."

None of these authorities except the first appear to have been cited before the learned Judges of the Federal Court Nor indeed does it appear to have been considered whether the doctrines evolved in the interpretation of one organic instrument could be of wholesale application in construing another, irrespective of the impulses of its birth or the text of its being. If delegation of legislation is not permissible to the Legislatures in India, it should proceed from an express

1. (1883) 9 A C 117.
2. (1892) A C. 437.
3. (1919) A.C. 935.
4. (1933) A C 156
5. A I R. 1939 P C 36

prohibition or necessary intendment inherent in the written language of the constitution and no others As Earl Loreburn said[1] .

"In the interpretation of a completely self-governing constitution founded upon a written organic instrument, such as the British North America Act, if the text is explicit the text is conclusive alike in what it directs and what it forbids. When the text is ambiguous, as, for example, when the words establishing two mutually exclusive jurisdictions are wide enough to bring a particular power within either, recourse must be had to the context and scheme of the Act"

Is there any provision in the Government of India Act inhibiting delegated legislation or consecrating the principle of separation of powers within its fold by implication ? Section 60 enacts : "There shall for every Province be a Provincial Legislature which shall consist of His Majesty, represented by the Governor, and in the Provinces of Madras, Bombay, the United Provinces and Bihar, two Chambers. In other Provinces, one Chamber." Section 99 "Subject to the provisions of this Act, the Dominion Legislature may make laws (including laws having extra-territorial operation) for the whole or any part of the Dominion, and a Provincial Legislature may make laws for the Province or for any part thereof" Section 100 distributes the subject-matter of legislation between the Union and the Units. No section in the Act states The Legislature shall not delegate their powers to any other body ; nor is the language conferring the power exhaustive or complete excluding the possibility of any residue for disposal by the Constitution Act In the United States "*All* legislative powers herein granted shall be vested in a Congress of the United States ;" and the phrasing may therefrom possibly be inconsistent with the exercise of any legislative powers by any other body, for the reason that no legislative power is left for such exercise. Similar dissimilarity in the distribution of the executive and the judicial power in the two constitutions is equally evident

Nor does the scheme or context of the Government of India Act warrant any such assumption Rule-making powers have been confided to the Governor for the conduct of the business of the Provincial Government (section 59), to each Chambers for the regulation of its procedure (section 84), to the Federal Court to provide for its procedure and practice, limitation of appeals, the enrolment of Advocates, and the distribution of work (section 214) and to the High Courts for regulation of the practices and procedure of all Courts subject to its superintendence (section 224). The High Court is assigned administrative functions by section 224 , the Governor is entrusted with the task of making rules, 'defining the standard of qualifications of candidates for entry into the subordinate civil judicial service of a Province, and the posting and promotion of officers of such service is vested in the High Court (section 255). These are intended to be illustrative, and by no means exhaustive of the relevant provisions of the Constitution Act of India. What strikes the eye on a cursory glance at the Constitution Act is not the division of powers into water tight compartments, but their indiscriminate distribution dictated by the exigencies of efficient administration.

Had the Constitution Act of India adopted the constitution of the State of Massachusetts of 1780 that "the legislative department shall never exercise the executive and judicial powers or either of them, the executive shall never exercise the legislative and judicial powers or either of them, the judicial shall never exercise the legislative and executive powers or either of them ", the assumption made at the Bar in *Jatindranath's* case should not have been open to challenge Obviously the premise postulated appears to have been that both India and the United States owned a constitution similar in it's federal status, and that similarity of status must

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1. *A. G for Ontario* v. *A. G. for Canada,* (1912) A.C. 571.

attract similarity of capacity in the enactment of its laws both in what was allowed and what was prohibited What applied to the one must apply to the other. This was almost exactly the reasoning of the first Judges of the Australian High Court for importing into the Commonwealth Constitution in its infancy the doctrine of implied prohibition and immunity of instrumentalities propounded by Chief Justice Marshall in America. For such a course there was possibly greater justification. The framers of the Australian Constitution had inserted " provisions indistinguishable in substance, though varied in form" from that in the American constitution. It was therefore thought the same judicial interpretation should follow. When the same question arose before the Judicial Committee in *Webb* v. *Outrim*[1], Lord Halsbury rejected the doctrine on the ground that " no restriction on the power of State Legislatures was expressly enacted by the constitution, nor could any one be implied on any recognised principle of interpretation applicable thereto. It is obvious that there is no such analogy between the two systems of jurisprudence as the learned Chief Justice suggests ... But it is an extraordinary extension of such a principle to argue that a similarity not of words but of institutions must necessarily carry with it as a consequence an identity in all respects "

The learned Judges of the High Court of Australia however refused to follow the judgment of the Privy Council in the subsequent case of *Baxter* v *Commissioner of Taxes*[2], but thirteen years later the High Court of Australia revised its view, a Bench of six Judges holding in the *Engineers case*[3] that its previous decisions to the contrary rested on indefensible grounds :

" The doctrine of implied prohibition can no longer be permitted to sustain such contentions. The constitution must speak with its own voice, clear of any qualifications the Act has not expressed, or of expediency or political exigency."

The Constitution of America must certainly exercise a strong fascination to any one entrusted with the task of propounding a jurisprudence moulded on the federal framework But the closest parallel to the American is the Australian Constitution. Under the Constitution Act of Australia the legislative power of the Commonwealth is vested in the Federal Parliament, the executive power in the Queen, and the judicial power in the High Court of Australia and in such other Federal Courts constituted by Parliament. The qualification ' all ' to the legislative power is omitted. But when the validity of delegation of legislative power was raised in *Baxter* v. *Ahway*[4], Higgins, J., said : " The Federal Parliament has, within its ambit, full power to frame its laws in any fashion, using any agent, any agency, any machinery that in its wisdom it thinks fit, for the peace, order and good government of the Commonwealth." In 1930 the question was again elaborately canvassed in *The Victorian Stevedoring & General Contracting Co. Proprietary Ltd.* v. *Dignan*[5]. Section 3 of the Transport Workers Act 1928-1929 empowered the Governor-General to make regulations with respect to the employment of transport workers. Regulations so made were to have the force of law *notwithstanding anything in any other Act* except the Interpretations Acts 1901-1918 and 1904-1916. Such rules therefore could impliedly repeal or modify other existing statutes and in effect stood on par with section 3 of the Defence of India Act or the impugned proviso of the Bihar Act. Admittedly, "no decision of the Supreme Court of the United States had allowed the Congress to empower the executive to make regulations or ordinances which may over-reach existing statutes." A Full Bench of Five Judges examined the validity of the provision. The attack upon the Act was based upon " The American constitutional doctrine that no legislative body can delegate to another department of the Government or to any other authority, the power either generally or specially to enact laws." It was urged that the Commonwealth

1. (1907) A.C. 81
2 (1907) 4 C L R 1087.
3. (1920) 28 C L R. 129.
4 (1909) C L R. 626
5. (1931) 46 C.L.R. 73.

Constitution, both in substance and in arrangement closely followed the American model The maxim *delegatus potestas non delegare* was relied on But the learned Judges however overruled these contentions. It was pointed out by Dixon, J., that: "No similar doctrine has existed in respect of British Colonial Legislatures whether erected in virtue of the prerogative or by Imperial Statute". The observations of Willes, J, in *Phillips* v *Eyre*[1] were cited with approval "A confirmed Act of the local Legislature whether in a settled or a conquered colony, has, as to matters within its competence and the limits of its jurisdiction, the operative and force of sovereign legislation, though subject to be controlled by the Imperial Parliament." *R* v *Burah*[2], *Hodge* v *The Queen*[3] and *Powell* v *Apollo Candle Co.*[4] were also relied on. It was emphasised that the American Doctrine was the consequence of the separation of powers. The unanimous opinion of the Court was that "the distribution of powers in the Commonwealth Constitution did not restrain Parliament from reposing in the Executive an authority of an essentially legislative character" Dixon, J, ascribed the principle to "a conception of legislative power which depends less upon juristic analysis and perhaps more upon the history and usages of British legislation and the theories of English law . . . . . The conclusion that the constitution does not forbid the statutory authorities of the Executive to make a law provides an answer to another of the arguments relied upon by the appellants" In the end, section 3 of the Transport Workers Act was upheld as *intra vires* the Parliament of the Commonwealth

The Commonwealth Act of course is purely federal in structure, but there are features in the Canadian and the Indian Constitution Acts which preclude their classification within the strictly federal category of the United States[5] And if the High Court of Australia could accord legitimacy to delegated legislation even of the exceptional type associated with the name of Henry VIII, there does not appear any valid reason, on principle or authority to deny recognition to delegated legislation in India

Indeed it has always been regarded as settled law of the Commonwealth that the power of delegation vests in all Dominion Parliaments · Prof. A. B. Keith in his latest book on "The Dominions as Sovereign States" states at page 336:

"Subject to these limitations the plenary power of the various Parliaments, including even Provincial Legislatures, is as extensive as the Imperial Parliament in its plenitude of power could convey They are in no sense delegates of the Imperial Parliament, and they therefore are not bound by the rule affecting subordinate legislative bodies that *delegatus non potest delegare.* They have wide discretion to choose to what extent their enactments are to depend for their operation on declarations by the executive"

With the severance of the Judicial Committee of the Privy Council from India, the Federal Court has become the Supreme arbiter of legislative authority in the country It is a tremendous power that is being wielded by the Federal Court. As stated by Bishop Hoadly years ago; "whoever hath an absolute authority to interpret any written or spoken laws, it is he who is truly the law-giver to all intents and purposes, and not the person who first wrote or spoke them" Possibly when occasion arises those aspects which were not placed before the Court in *Jatindranath's* case may call for a fresh examination of the issue, resulting in a different conclusion altogether Or, it may be that it is not too late for the Constituent Assembly to enact necessary provisions recognising delegation as implicit in the grant of legislative power Whatever the future may hold, delegated legislation as found by the Donoughmore Commission is not only desirable but necessary for effective legislation to provide for the increasing wants of life. India is on the march. What is indispensable to England cannot be denied to India.

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1 (1870) L R 6 Q B. 1
2 (1878) 3 A C 889 I L R 4 Cal. 172.
3 (1883) 9 A C 117
4 (1885) 10 A C. 282
5 For a fuller discussion on this point, *see* Wheare Federal Government, pp 19, 28.

BOOK REVIEWS.

M. C. AND S. C. SARKAR'S LAW OF EVIDENCE IN INDIA, PAKISTAN AND BURMA, Eighth Edition, 1949, by S. C Sarkar. Published by S C Sarkar and Sons, Ltd, 1-C, College Square, Calcutta, 12 Pages 1462 Price Rs 32

Sarkar on Evidence is a book with which every lawyer whether young or old has always been familiar Perhaps there is no book in the field now which has so exhaustively and thoroughly dealt with the subject The commentary on each section is dealt with under separate and appropriate topical headings, a synopsis of which is given at the opening of the commentary on each section A glance through the synopsis will direct at once the student and the lawyer to the place where the relevant subject is dealt with. The law is stated in the form of propositions together with the relevant and up-to-date, case-law and is both analytical and exhaustive Important groups of sections dealing with confession, exclusion of oral evidence, estoppel, and examination witnesses, have received very careful and adequate treatment at the hands of the author No wonder that this book has become to be looked upon as a classic on the subject of evidence One may be permitted to point out that with regard to the case-law, references might with a view to greater usefulness, have been given to senior non-official legal journals also. The printing and get up of the whole book leaves nothing to be desired.

THE INDIAN CONTRACT ACT, SALE OF GOODS ACT AND PARTNERSHIP ACT, by T R Desai, 14th Edition, edited by J. Diwan and M Kantawala, Advocates (Original Side), High Court, Bombay. Published by Ratilal K. Desai, B A, LL B, Gandhi Road, Ahmedabad Pages 722. Price 12-8

This is a handy commentary on the Contract Act and the allied Sale of Goods Act and Partnership Act which would be found useful by students The short commentary to the sections of the Acts would enable a student to understand the principle underlying the sections and the reference to important decisions adds to the usefulness of the book An analytical summary of the three Acts given in the appendices as also the difference between the English and Indian law would we are sure, be appreciated by students

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A TREATISE ON THE LAW RELATING TO MINORS, by M W Prahan, B SC, LL B, Advocate Published by N N Tripathi, Ltd, Law Publishers Princes Street, Bombay 2. Pages 355. Price Rs 15

In these days of prolific Acts and commentaries, it is refreshing to come across a treatise on a particular branch of the law. The whole subject is as claimed by the author "stated in the manner of a continuous narrative" Appropriate heads of treatment have been chosen and the personal law of the minors and the statutory law, if any, have been given and the differences between Hindu and Muhammadan minors have been pointed out wherever necessary The several aspects in which the question of minority can arise have been logically arranged and dealt with The various propositions enunciated are supported by a discriminating selection of the leading cases on the subjects More books on these lines would be certainly welcome

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THE INDIAN CONTRACT ACT, by G N Sinha, B A, B L, Advocate, High Court, Patna. Published by the Author, 31, Dr N C Chatterjee Road, Bhagapur Vol. III. Price Rs 8

This volume dealing with commentaries on sections 124 to 238 of the Contract Act completes the set and maintains the features about which we had already referred to in the review of the previous volumes The complete set of the three volumes is bound to be found useful by the profession.